

**From:** jfrincon@mindspring.com@inetgw  
**To:** Microsoft ATR  
**Date:** 1/23/02 11:33am  
**Subject:** Microsoft Settlement comments

Dear Judge Kollar-Kotelly,

I write to express my dissatisfaction with the Proposed Final Judgment (PFJ) for USA vs. Microsoft. While time limitations prevent me from conducting an exhaustive review of all the aspects of the provisions of the Final Judgment that I find to fail the public interest, allow me to focus on two particular issues that are of crucial importance:

- 1) The exclusion of Microsoft's handheld version of Windows (i.e. Windows CE and variants, Windows for Automotive, Windows NT Embedded, and Windows XP Embedded from the definition of "Windows Operating System Product" delineated in Section VI, Item U of the PFJ;
- 2) Provisions of Section III, Item J which give Microsoft broad discretion on determining which parties are eligible to receive API, Documentation or Communications Protocol information.

1) Handheld and embedded operating systems

I have been working as a user of handheld devices for almost ten years and have been an applications developer for three of those ten. It has been very clear to me that portable devices will be a fundamental domain of computing technology, perhaps even replacing the desktop computer as a central unit of processing, in the near term. While there are various players in the handheld and mobile marketplace, Microsoft is a competitor that has historically used its weight to stifle innovation in this marketplace until it was ready to embrace it.

In terms of its APIs, the embedded versions of Microsoft's operating systems are modeled closely--sometimes even ported directly--on its Win32 API for desktop operating system development. These versions of the operating system, designed to be stored in quickly-accessible RAM or ROM rather than on disk, and with an apparently closer connection to the hardware in which they're operating, are not significantly technically different from the existing desktop Windows technology, save for their portability. Microsoft itself, when advocating for the Embedded version of its operating system, argues that this close tie provides one of the main reasons why developers should adopt its solution:

"Windows XP Embedded is the componentized version of the leading desktop operating system, enabling rapid development of the most reliable and full-featured connected devices. Based on the same binaries as Windows XP Professional, Windows XP Embedded enables embedded developers to individually select only the rich features they need for customized, reduced-footprint embedded devices."

[<http://www.microsoft.com/windows/embedded/xp/evaluation/overview/default.asp>-- accessed Jan 23, 2002]

The versions of the Microsoft OS for handheld and mobile devices, (Windows CE and derivatives including Windows CE for Handheld PC, Windows CE for Palm-size PC, Windows CE for Desktop PC) are tied equally closely in Microsoft's eyes:

"The Windows CE operating system is based on the Microsoft Win32(R) application programming interface. Therefore, you can enhance your applications by using exposed APIs from bundled applications."

[<http://www.microsoft.com/mobile/developer/downloads/ppcsdk2002.asp> -- accessed January 23, 2002]

Microsoft's own behavior in the handheld and mobile marketplace reflects similar actions to those presented in the Court's Findings of Fact, including concerted action to protect applications barrier to entry by performing ongoing modifications to its handheld data storage methodologies, by modifying established connectivity protocols (including the infrared communications protocols between competitors' handheld devices), and by maintaining its own data transfer protocols closed, thus thwarting the efforts of middleware vendors and non-Windows handheld device manufacturers to provide connectivity solutions that make full use of the capabilities of users' desktop computer hardware to connect with mobile devices.

Because of the rising capabilities and reduction in size of microprocessors, along with the quickly falling cost of flashable (rewritable) ROM and high-capacity RAM, it is very likely indeed that what we call embedded or mobile systems today will come to replace wholly desktop-based solutions for everyday users in the near and mid-range future. Embedded systems will (and do) reside in automobiles, household appliances, communications devices, and just about every other type of device that uses electronics to perform complex functions.

Allowing Microsoft to extend its monopoly into the embedded and mobile marketplace while remaining unfettered by the consequences of its previous anti-competitive behavior in the desktop operating systems marketplace is detrimental to the public interest.

2) This point is much more brief, but equally important. In giving Microsoft the power to determine that a company "meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business" before receiving API and Documentation, or Communication Protocol information, it effectively gives Microsoft the power to exclude open source and free software developers from building systems that are fully interoperable with existing solutions provided by Microsoft, mostly because these developers are not engaging in "viable business". Indeed, many of these companies are not engaged in business at all, but are working through the concepts of sharing and widely disseminating usable code and applications. Powerful and open public goods such as the Internet and Linux grew through this kind of non-business activity. This item effectively shuts out the public interest in interoperability and standards compliance by giving Microsoft the power!

to define what is authentic and viable. Microsoft CEO Steve Ballmer's rhetoric regarding Linux as a cancer demonstrates their predisposition to exclude open source systems from any and all consideration for interoperability and access:

"The only thing we have a problem with is when the government funds open-source work. Government funding should be for work that is available to everybody. Open source is not available to commercial companies. The way the license is written, if you use any open-source software, you have to make the rest of your software open source. If the government wants to put something in the public domain, it should. Linux is not in the public domain." [<http://www.linuxmax.net/maxnews.php?ArticleID=26> -- Accessed January 23,2002]

Aside from Mr. Ballmer's odd reasoning that an operating system for which the source is open and available to anyone is not in the public domain, his reasoning that open source licenses are not commercially viable makes a statement of predisposition that I have no doubt would be used as legally acceptable parameters, under the PFJ, to thwart public efforts at building an interoperable, free operating system.

I sincerely hope that Microsoft will have to atone for its extensive history of anticompetitive behavior. However, it is clear to me, and to those of us in the technology industry who have seen Microsoft as a company uninterested in cooperating, that this PFJ would do little to force that atonement and would do much to provide Microsoft a legal platform from which to continue its anticompetitive behavior.

Sincerely,

Juan Felipe Rincón  
Arlington, Virginia